

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3262 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER GSRTC

Versus

DAHABHAI VALJIBHAI PARMAR

Appearance:

MR KM PARIKH for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/08/1999

ORAL JUDGEMENT

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. The petitioner has challenged the award, dated 20.1.1998 passed by the Labour court, Baroda directing reinstatement of the respondent with 50% backwages and continuity of service. The petition was admitted on 30.4.99. Notice was served. Shri J.S.Brahmbhatt appears for the respondent. No counter affidavit has been filed. Learned counsel for the parties were heard.

2. The brief facts giving rise to the present petition are as under:

3. The respondent was employed as Bus conductor with the petitioner-Corporation. He was found absent between 3.6.94 to 7.7.94 without prior sanction and without intimation to the concerned authorities of the petitioner. Departmental enquiry was initiated and it seems that hearing was given to the respondent in the departmental enquiry which was initiated on 18.7.74. On 13.1.1995 the respondent was dismissed from service. Matter was referred to the labour court for adjudication. The labour court rendered the impugned award after hearing the respective contentions of the parties to the reference. It is this award which is under challenge in this writ petition.

4. The subsequent events have rendered the relief of quashing of order of reinstatement infructuous. The respondent retired on 31.8.98. The impugned award was rendered on 20.1.1998. Since the respondent was not reinstated in between 20.1.1998 and 31.8.98 the question of going to the invalidity regarding the order of reinstatement becomes infructuous and redundant exercise of this work is hardly called for.

5. The learned counsel for the petitioner contended that the punishment awarded is negligible and that stoppage of increments should also have been permitted by the labour court. However, on the facts and circumstances of the case, ordering stoppage of increments even in this writ petition will be redundant because the respondent has retired on 31.8.98 whereas the award was rendered on 20.1.1998 and hardly any annual increment should have fallen due after superannuation of the respondent.

6. The only point for consideration is whether the order for payment of backwages to the extent of 50% is not adequate punishment in the eyes of law.

7. Looking to the period of absence which comes to one month and four days and also taking into consideration the explanation offered by the respondent that his son fell down and was admitted in the hospital and he was the only member who was looking after his sick son hence he remained absent the quantum of backwages should not have exceeded 25%. The contention of the learned counsel for the respondent has been that the labour court was justified in awarding 50% backwages.

The explanation given by the respondent for his absence does not seem to have been accepted by the enquiry officer nor by the labour court. However, on the facts and the circumstances of the case, and keeping in view the fact that the respondent has already retired and he was facing financial difficulties, award of backwages passed by the labour court is reduced to 25% . With the above observations, the petition partly succeeds and is allowed partly. The award of 50% backwages is reduced to 25% backwages. No order as to costs.

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